IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Writ Petition No.10917 of 1997
DATED 1-2-2007

BETWEEN
Deputy Executive Engineer,
Gotta Barrage Sub Division,
Vamsadhara Project, Hiramandalam.

..
Petitioner

And

Sri G.Rangayya and another.

.. Respondents

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.10917 of 1997

ORDER:

Aggrieved by the award of the Industrial Tribunal-cum-Labour Court, Hyderbad in I.D.No.47 of 1991 dated 25.9.1996, the Deputy Executive Engineer, Gotta Barrage Sub Division, Vamsadhara Project, Hiramandalam, Srikakulam District has approached this Court seeking to quash the award.

The Government referred the following dispute for adjudication by the Tribunal.

> "Whether the Deputy Executive Engineer, Gotta Barrage, Sub-Division, Vamsadhara Project, Hiramandalam is justified in terminating the services of Sri G.Rangayya? If so, to what relief the said workman is entitled?"

In his claim statement, the 1st respondent stated that he had worked under the petitioner herein from 1971 to July 1973 continuously and that he was retrenched in July, 1973 without any notice and compensation. He also stated that while he was retrenched, his juniors and fresh workmen were continued/appointed. The 1st respondent contended that the action of the petitioner is contrary to the provisions of Section 25-F and G of the Industrial Disputes Act, 1947 (for short 'the Act').

In their counter filed before the Tribunal, the petitioner herein denied that the 1st respondent had worked with them from 1971 to 1973. He also denied that the 1st respondent was retrenched while retaining his juniors. According to the petitioner, the 1st respondent never worked with them at any time and there was no privity of contract between them and as such, the question of removing him from service did not arise.

The workman examined himself as W.W.1 and on behalf of the petitioner herein, the Office Superintendent of Executive Engineer, Vamsadhara Project was examined as M.W.1. No documentary

evidence was marked by either the petitioner or the 1st respondent.

The Tribunal, relying on the self serving oral testimony of the 1st respondent, held that it did not find anything in the cross examination to doubt the testimony of the 1st respondent that he worked from 1971 to July 1973. The Tribunal held that since the petitioner herein had failed to produce the records for the relevant period to show that the 1st respondent never worked with them, despite notice being served, an adverse inference had to be drawn to the effect that if the records had been produced, it would show that the 1st respondent had worked from 1971 to July 1973. The Tribunal ultimately came to the conclusion that the 1st respondent had worked with the petitioner from 1971 to July 1973, for a period of more than one year and since no notice was given with regard to his termination and since retrenchment compensation was also not paid, the retrenchment of the 1st respondent was contrary to Section 25-F of the Act. While holding that the 1st respondent was entitled to be reinstated, the Tribunal held that he was not entitled for backwages and continuity of service inasmuch as he had failed to take recourse to law for a long time and that he had kept silent for a period of more than 16 years. Accordingly, The Tribunal directed reinstatement of the 1st respondent without

backwages and without continuity of service.

The learned Government Pleader for Irrigation would submit before this Court that except for the self-serving oral evidence of the 1st respondent as W.W.1, there was no evidence on record to show that he had ever worked with the petitioner herein. The learned Government Pleader would contend that the burden is on the 1st respondent-workman to establish that he had worked continuously for a period of not less than 240 days during the 12 months period, prior to his termination. She would submit that since this burden was not discharged by the workman, the Tribunal had erred in shifting the burden on the petitioner herein and in drawing an adverse inference against them merely for the reason that no records were produced, despite a notice being served on the petitioner by the 1st respondent. The learned Government Pleader would contend that since it has been the case of the petitioner herein in the counter filed before the Tribunal that the 1st respondent had never worked with them, the question of producing records to show that the 1st respondent did not work with them did not arise.

It is well settled by a catena of judgments in **Manager, Reserve Bank of India, Bangalore v S. Mani**[1]; **Batala Coop. Sugar Mills Ltd v. Sowaran Singh**[2] *:;* **Surendranagar District Panchayat v.**

Dahyabhai Amarsinh[3]; **Chief Engineer (construction) v. Keshava Rao (dead) by Lrs**[4] ; **Range Forest Officer v. S.T.Hadimini** [5] that the burden, to prove that he had put in a minimum of 240 days service during the period of 12 months prior to the date of his termination, is on the workman and in the absence of the workman having discharged this burden, it cannot be said that the mandatory requirement under Section 25-F is violated. It is only when this initial burden is discharged by the workman, would the burden shift on the employer to adduce evidence to the contrary. Since it has been the case of the petitioner herein, in the counter filed before the Tribunal, that the 1st respondent had never worked with them, the question of the petitioner producing records to show that the 1st respondent did not work with them, would not arise. Further, the 1st respondent having raised a dispute, 16 years after his alleged termination, cannot seek production of records after such long lapse of time nor was the Tribunal justified in drawing an adverse inference solely on the ground that the records were not produced.

While, this Court, in Certiorari proceedings, exercises supervisory jurisdiction over Labour Courts/Industrial Tribunals and does not sit in appeal over the findings recorded by them where the

conclusions drawn by the Tribunal and the findings recorded by it are based on no evidence or are perverse or where there is an error apparent on the face of the award, this court would be justified in interfering in the matter. The Tribunal has acted contrary to law in placing the burden on the petitioner-employee to show that the respondent-workman had not worked with them for a period of more than 240 days in the twelve month period preceding his termination.

For the foregoing reasons, the award of the Tribunal to the extent it held that the 1st respondent is entitled to be reinstated is illegal and is required to be quashed. Accordingly, the writ petition is allowed. The impugned award in I.D.47 of 1991 dated 25.9.1996 is quashed. However, in the circumstances, there shall be no order as to costs.

RAMESH RANGANATHAN,J

Dt:1.2.2007
msv.

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[1] (2005) 5 SCC 100
[2] (2005) 8 SCC 481
[3] (2005) 8 SCC 750
[4] (2005) 11 SCC 229
[5] (2002) 3 SCC 25